

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO MERINO,

Plaintiff,

v.

VIVIAN VUONG,

Defendant.

No. 2:21-CV-0826-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 36.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
of substantial complexity. The compelling evidence against Terrell made it
extremely unlikely that he would succeed on the merits.
5

6 *Id.* at 1017.

7 In the present case, the Court does not at this time find the required exceptional
8 circumstances. A review of Plaintiff's filings in this case reflects that he has a sufficient ability to
9 articulate himself on his own, with some assistance from other inmates. Further, as discussed in
10 the Court's December 14, 2021, findings and recommendations, there is little likelihood of
11 success on the merits because Plaintiff's allegations as stated fail to set forth a claim upon which
12 relief can be granted.

13 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
14 appointment of counsel, ECF No. 36, is denied.

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16 Dated: June 13, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

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